



## Office of the Attorney General

State of Texas

October 7, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Emmitt Roberts  
General Counsel  
Texas Alcoholic Beverage Commission  
P. O. Box 13127  
Austin, Texas 78711-3127

OR92-585

Dear Mr. Roberts:

You request a decision from this office pursuant to the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. Your request was assigned ID# 17292.

The Texas Alcoholic Beverage Commission (the "commission") has received a request from an applicant for a particular position for the scores of applicants for that position. You have submitted to us for review the "Rating Schedule for Qualifications[;] Director of Auditing and Tax Reporting - #270" (rating schedule) for each of the applicants. You assert that the numerical ratings for the other applicants on these rating schedules may be withheld pursuant to section 3(a)(11) of the act.<sup>1</sup>

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." V.T.C.S. art. 6252-17a, § 3(a)(11). The purpose of this section is

to protect from public disclosure advice and opinions on public policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.

*Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). The test under section 3(a)(11) is whether the interagency or intra-agency information consists of advice, opinion, or recommendation that is used in

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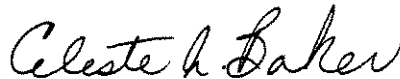
<sup>1</sup>Thus, the requestor's scores are not at issue here.

the deliberative process. Open Records Decision No. 574 (1990); *see also* Open Records Decision No. 466 (1987) (circumstances surrounding the creation of specific information determine section 3(a)(11) applicability).

We are advised that the numerical ratings at issue here were determined by a commission employee authorized by the commission to do so and that the sum of the ratings for each applicant were used to establish each "applicant's relative standing to be considered [by the agency] in making the final decision regarding the ultimate selectee." Thus, the numerical ratings constitute intra-agency advice to be used in the agency's deliberative process. *See* Open Records Decision No. 565 (1990) (section 3(a)(11) applies to interview score worksheet, interview summary forms and evaluation records for employee's employment application to the extent that they reflect advice, opinions and recommendations of interview board). Therefore, the numerical ratings of the other applicants may be withheld from public disclosure under section 3(a)(11) of the act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling than with a published open records decision. If you have questions about this ruling, please refer to OR92-585.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/HJ/lmm

Ref.: ID# 17292

Enclosure: Submitted documents

cc: Ms. Wanda Thomas  
Senior Audit Analyst  
Texas Alcoholic Beverage Commission  
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(w/o enclosures)